

FALK & FISH

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2-23-01

P. Spwell

February 22, 2001

Via Federal Express
Tracking No. 8245 5537 3091

Examiner Stephen Funk
United States Patent and Trademark
Office Group 2854
Room 9D35- Crystal Plaza IV
Arlington, VA 22202

Re: Reissue Application Serial No. 09/315,796 to Davis and Williamson
Our File: WILL 2501

Dear Examiner Funk:

Today my colleague at Worsham Forsythe Wooldridge LLP, John P. Pinkerton, authorized the charge of \$590.00 for the recently submitted Amendment (2/6/01) to his deposit account. Attached is a copy of his letter, which was faxed to you today.

Reissue applicants have recently returned from Australia, and accordingly, attached hereto for filing are:

- (1) Second Supplemental Joint Reissue Declaration;
- (2) Summary of Interview - February 6, 2001;
- (3) Reissue Applicants' Summary of Second Part of Bird Deposition; and
- (4) Certificate of Service for the above.

Respectfully submitted,


Robert Hardy Falk

RHF:tsmc
Enclosure(s)

cc: John P. Pinkerton, Esq.

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John P. Pinkerton

Direct Dial: 214.979.3065

Email: jpinkerton@worsham.net

February 22, 2001

Via Facsimile - 703.308.5841

Examiner Stephen Funk
United States Patent and Trademark
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Arlington, VA 22202

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Re: Reissue Application Serial No. 09/315,796 to Davis and Williamson
Falk & Fish File: WILL 2501
Our File: 4434.008000

Dear Examiner Funk:

In connection with the above-referenced reissue application, this letter is authorization to charge fees relating to the Second Supplemental Amendment Under 37 CFR §1.111, which are in the amount of \$590, to our deposit account number 23-3189.

Thank you very much for your assistance in this regard. If you have any questions, please give me a call.

Very truly yours,

John P. Pinkerton

JPP:tsmc

Attorneys and Counselors at Law

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09/315,796 - 05/20/99

#41 Summary
Interview
2-23-01
L. Spruell

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Reissue Application of:
BILL L. DAVIS and JESSE S. WILLIAMSON
 For Reissue of U. S. Patent 5,630,363
 Issued May 20, 1997
 Serial No. 08/515,097
 Filing Date: May 20, 1999
 Serial No.: 09/315,796
 For: **COMBINED LITHOGRAPHIC/
 FLEXOGRAPHIC PRINTING
 APPARATUS AND PROCESS**

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 § Group Art Unit: 2854
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 § Examiner: S. Funk
 § J. Hilten
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SUMMARY OF INTERVIEW - FEBRUARY 6, 2001

To: The Honorable Commissioner of
 Patents and Trademarks
 Washington, D.C. 20231

Sir:

Bill Davis, one of the reissue applicants, together with Ray Prince and the undersigned, attended a scheduled interview with the examiner on February 6, 2001.

Prince reviewed his comments made in his Fourth Supplemental Declaration, executed September 27, 2000, concerning the RDP Marathon article, as well as his comments concerning (a) the U.S. Hartung '752 patent made in his Third Supplemental Declaration, executed September 11, 2000, (b) the file history of the opposition to EP 620,115 (counterpart of the '752 patent) made in his Fifth Supplemental Declaration, executed November 15, 2000, and (c) German Gebrauchsmuster G 93 05 552.8 (U1) made in his Sixth Supplemental Declaration, executed December 5, 2000. Prince opined that the specification and claims of the Gebrauchsmuster were non-enabling for a number of reasons.

The undersigned counsel maintained for the reasons set forth in the Fifth Supplemental Statement of Prior Art and Other Information, filed December 8, 2000 (a courtesy copy of which was provided the Examiner at the interview) that only the claims of the Gebrauchsmuster were prior art against the '363 patent. Counsel referred to *In re Tenney*, 254 F.2d 619, 624 (C.C.P.A. 1958) on this point.

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Prince also reviewed the major points made in his declarations executed May 19, 1999 (original), March 25, 2000 (supplemental) and June 29, 2000 (second supplemental) that claims 42-86 [and now additional claims 94-96 and 100-102] concerning perfecting were supported by the original specification. The Examiner agreed with Prince's assessment.

Counsel emphasized the Federal Circuit case law concerning §120 entitlement and that under *In re Shaw*, 202 USPQ 285, 293 (Comm'r. Pat. 1978), *the examiner had a duty to compare the specification of Serial No. 08/435,798 with the specification of the '713 and '058 patents (U.S. Patents No. 5,760,713 and No. 6,116,058) and analyze the issue of support in the '713 and '058 patent claims in Serial No. 08/435,798*. Expert Prince indicated the necessary support was lacking, pointing to testimony in his second supplemental declaration issued June 20, 2000.

Counsel reviewed the Judgment entered by Judge Lynn in the Northern District of Texas, and indicated that he agreed findings 9-18 were supported by the record:

9. WPC is the owner of United States Patent No. 5,630,363 ("the '363 patent"). On May 20, 1999, WPC filed application serial number 09/315,796 in the United States Patent and Trademark Office ("PTO") to reissue the '363 patent ("the Reissue Application"), which is presently pending in the PTO.

10. The uncontroverted evidence in the record shows that, in June of 1992, Davis and Williamson conceived the invention described and claimed in the '363 patent.

11. The evidence in the record further shows that, on June 12, 1994, Davis and Williamson disclosed the invention of the '363 patent to Steve Baker ("Baker"), a salesman of PRI, telling him that they wanted to apply inks or coatings using the flexographic process upstream of or prior to printing with lithography in a continuous in-line process on an offset lithographic press and that they wanted to use a retractable, interstation printer/coater having an anilox roller and chambered doctor to perform the flexographic process, and that on June 15, 1994, Baker told John W. Bird ("Bird"), product manager of PRI, the information that Davis and Williamson had disclosed to Baker on June 12, 1994.

12. WPC entered into an agreement with PRI to provide to WPC a retractable, interstation flexographic printer/coater with an anilox roller and a chambered doctor.

13. Pursuant to DeMoore's request on July 7, 1994, Rendleman, who was employed by PRI, prepared drawings of the ferris wheel, retractable flexographic printer/coater shown in Figure 2 of the '363 patent. The ferris wheel, retractable flexographic printer/coaters manufactured and delivered to WPC by PRI were paid for by WPC pursuant to the agreement between WPC and PRI.

14. On May 4, 1995, DeMoore, Rendleman and Bird filed U. S. patent application serial number 08/435,798 ("the '798 application"). The overlapping process disclosure common to the '798 application and the '363 patent and the Reissue Application originated from Davis and Williamson. The subject matter of unprosecuted method claims 24-35 of the '798 application, and narrower claims thereof, do not conflict with the '363 patent and the Reissue Application. Davis, Williamson and WPC do not claim inventorship of the claimed subject matter of claims 1-23 of the '798 application pending (allowed or on appeal) as of December 1, 2000, and the unprosecuted claims 24-35 of the '798 application, and any claims of U.S. Patents No. 5,598,777, No. 5,631,316, No. 5,960,713, and No. 6,116,158.

15. Plaintiffs no longer contend that they, individually, collectively or in any combination, is or are a sole or joint inventor of any claim of the '363 patent as issued or any of claims 1-87 of the Reissue Application pending as of December 1, 2000.

16. With respect to all claims of the '363 patent as issued and claims 1-87 of the Reissue Application pending as of December 1, 2000, priority rests in the inventive entity of Davis and Williamson and not in any entity consisting of one or more of DeMoore, Rendleman and Bird.

17. There was no fraud or inequitable conduct in the prosecution of the application that resulted in issuance of the '363 patent.

18. Based on the evidence in the record in this action, the information presently known to the parties, and the prior art and other information of record in the Reissue Application, all claims of the '363 patent as issued, and claims 1-87 of the Reissue Application, are valid, including being valid under the provisions of 35 U.S.C. §§ 102 (a), (b), (c), (e), (f) and (g) and 103.

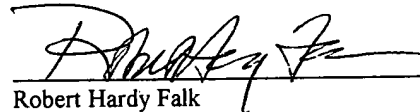
Counsel argued that if any reasonable person in reviewing the Baker (two declarations), Bird (three declarations), Brown, Garner and reissue applicants' Rule 131 declaration and the corresponding deposition testimonies, he would agree that the findings were inescapable, and that there was a clear case of derivation on the part of PRI and DeMoore, et al. in Serial No. 08/435,798 from Davis and Williamson, based upon a restaurant meeting on June 12, 1994 in Atlanta and subsequent meetings between reissue applicants and Bird and/or Baker starting in mid-August 1994.

Counsel also indicated that Protestors belated claim to conservatorship with Rendleman in claims 15-16 was legally erroneous in view of *Micro Chemical, Inc. v. Great Plains Chemical Co.*, 194 F.3d 1250 (Fed. Cir. 1999), as it would be improper to include the ferris wheel retraction mechanism as a part of the "flexographic ink-producing means" because §112, ¶16 does not "permit

incorporation of structure from the written description beyond that necessary to perform the claimed invention." 194 F.3d at 1258.

Counsel indicated that the belated claims to the benefit of 35 U.S.C. §120 made by Protestors and DeMoore, et al. in mid-1998 to the application leading to the '713 and '058 patents came, according to their deposition testimony, well after Chairman DeMoore and Vice President Garner had learned about the '363 patent during late 1997 or early 1998. Counsel indicated that a study of the '713 and '058 file histories would show an extremely belated and ineffective citation of the '363 patent, and that it was clear that PRI and DeMoore, et al. intended to wrongfully claim the benefit of Serial No. 08/435,798 and 35 U.S.C. §120 in order to avoid citing the '363 patent in the file histories leading to the '713 and '058 patents.

Respectfully submitted,



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POLICE DEPARTMENT -

1. *What is the purpose of this document?*
 2. *What are the main findings of the study?*
 3. *What are the implications of the findings?*
 4. *What are the limitations of the study?*
 5. *What are the conclusions of the study?*
 6. *What are the recommendations of the study?*
 7. *What are the future research directions?*
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Robert Hardy Falk

43 / Summary
Second Pair
of BIRD Deposit
2-23-01
L. Spruel

BILL L. DAVIS and JESSE S. WILLIAMSON

Issued May 20, 1997

Serial No. 08/515,097

Group Art Unit: 2854

Examiner: S. Funk
J. Hilten

**For: COMBINED LITHOGRAPHIC/
FLEXOGRAPHIC PRINTING
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TO: The Honorable Commission of
Patents and Trademarks
Washington, DC 20231

SIR:

Reissue Applicants believe the aspects of the second part of Bird's deposition significant

to this prosecution are as follows:

Bird testified in the second part of his deposition on November 20, 2000, that his original recollection of the Atlanta meeting in July, 1994 [stated in his original PTO declaration, (Bird Dep., Exhibit 2, ¶10) was incorrect, and that after reviewing a restaurant receipt, his monthly calendars, and refreshing his recollection, it could not have been in July 1994 (9:20-10:3). After reviewing his DayTimer for June, 1994, Bird testified that he went to Italy on June 4, 1994 and returned to Dallas June 12, 1994 (29:14-19), and he recalls that he would have gone to Atlanta for the meeting with Jesse Williamson and Bill Davis, but for his trip to Italy (29:4-19).

Bird's best recollection, consistent with his testimony in the Second Supplemental Declaration, was that his disclosure to DeMoore of the Davis-Williamson ['363] process [he learned from Baker after Baker's Atlanta trip] came on June 15, 1994 (See 38:19-39; 56:8-20). Upon learning of it, Howard DeMoore was impressed with the contemplated process (59:17-19; 142:17-18; 160:10-17; and 163:16-166:25). The Graphics Show was June 16 through June 18, 1994, somewhere in Texas (31:15-22; 35:24-25). Regardless, Bird indicates that as soon as he

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had received the information from Baker, he would have told PRI's CEO DeMoore because of its significance (14:8-15:4).

Bird also testified that subsequent to June 12, 1994, starting in mid-August, 1994 and lasting to May 2, 1995, Bill Davis and Jesse Williamson disclosed details of what they wanted in their process, and that the information would have been passed on to various people inside the PRI organization, including DeMoore (19:2-4). Bird confirmed the testimony in his second supplemental declaration. Bird identified, by testimony or cross-examination by counsel Pinkerton for defendants/reissue applicants and exhibits, certain process portions of PRI application Serial No. 08/435,798 that came from Davis and Williamson:

"Q. Okay. Do you recall that a patent application was filed in May of 1995 directed to the cantilevered Ferris wheel device? Do you recall that?

"A. Yes

"Q. And prior to the filing of that application would you have had opportunity to discuss that application with the patent attorney, Mr. Griggs?

"A. Yes.

"Q. And did you provide certain information with respect to that application in regard -

"A. Yes.

"Q. Okay. Yesterday I asked you to review that application, didn't I?

"A. Yes.

"Q. And I only have one copy of this, but I asked you to review the application and mark in there information relating to the details of the printing process; is that correct?

"A. Correct.

"Q. Okay. And did you do that?

"A. Yes.

"Q. Okay. With respect to that information that you've marked in the application relating to the process, who provided you that information?

"A. Williamson Printing.

"Q. And who is Williamson Printing?

"A. Jesse Williamson and Bill Davis.

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"Q. Was that in connection with the various meetings that you had with them and you've discussed throughout this deposition and your declaration?

"A. Yes.

"Q. And would you have been provided that information in the various meetings set forth in supplemental declaration of John Bird, Bird Exhibit 3, which are listed in detail here as item number two?

"A. Yes.

"Q. Okay. Let me hand you -

"A. I still haven't got to three.

"Q. Excuse me?

"A. Still haven't got to three.

"Q. I'm sorry.

"A. Okay.

"Q. So after looking at that is your answer yes?

"A. Yes.

"Q. Okay. Let me hand you now - we'll mark this as Bird - Bird 37?

"THE WITNESS: I think we have a 37.

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"MR. PINKERTON: We're going to mark an exhibit number. It's 37. Bird 37 is the next one. I'm pretty sure.

"(Deposition Exhibit 37 marked)

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"MR. PINKERTON: Following your statement and my telling you that there was no question, I then asked a question. I said has Exhibit 37 been placed in front of you.

"Q. Can you answer that question again, please, sir?

"A. Yes.

"Q. You have it. Identify the document for us, please, sir.

"A. It is the retractable inking coating apparatus having first movement between printing units.

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"Q. Okay. If I could see that, please, sir.

"And for the record this is - has production number W00134 - excuse me, 001349 through 001412. A copy of the patent application, serial number 08435798 and the document number W001352 has on it attorney docket number B6012.

"MR. PINKERTON: And I'll hand that to counsel for plaintiff since we don't have another copy of it.

"Q. Mr. Bird, let me show you again Exhibit 37. Did I ask you to review the text of that patent, the specification of it?

"A. Yes.

"Q. And did I ask you to mark in yellow portions of that specification, which are process details that were provided to you by Williamson Printing?

"A. Yes.

"Q. And is that what you did?

"A. Yes.

"Q. Can you tell us generally with respect to the application what is in the application Exhibit 37 that originated from Williamson Printing as a general matter?

"A. As a general matter it was the, if you like, the flip side of WIMS improvement concept.

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"Q. What was the concept that you're talking about, the improved concept?

"A. Improved concept was bringing in the flexo process to apply the metallics, etcetera.

"Q. And where was the flexo process going to be used?

"A. It would be upstream in the printing process.

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"Q. And how would the flexo printing actually be accomplished as part of the concept?

"A. It would have to be applied from a flexo applicator of some description.

"Q. Okay. And what was the description from a general manner?

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"A. In a general - it would be an anilox roll with some sort of doctoring device, metering device, which is the general form of a flexo device and would have some means of being able to be retracted on and off impression in and out of the way when not in use and then when in use would be able to apply at the blanket cylinder.

"Q. That concept as you've described, where did that concept come from?

"A. Williamson Printing.

"Q. And who in particular?

"A. Jesse Williamson in particular.

"Q. And anyone else?

"A. Bill Davis.

"Q. Okay. The first that you heard of that concept was when?

"A. That was directly after the meeting in Atlanta with Steve Baker and Jesse Williamson and Bill Davis, et al, to view our UV systems and our high velocity hot air dryer. That was also clear why they were so interested, they being Williamson Printing, in our high velocity hot air drying system.

"Q. Let me pull the - you don't have to hold that any more. Thank you. Now, that meeting - I think you testified that it was of interest to you, the meeting was of interest to you?

"A. Very much so.

"Q. And why was -

"Q. And why was the meeting of interest to you?

"A. Because we were in - already had started discussions, and I think we discussed it earlier, that I think we had started almost synonymous with the settling of the previous court case where Printing Research had sued Williamson Printing, and we knew that as part of that settlement that there was a transaction business that was agreed to be performed.

"I had started working on my relationship with Williamson Printing almost as soon as that case had been settled and was working up a relationship with the Williamson Printing Corporation to that end.

"Q. And approximately when did you start rebuilding that relationship?

"A. Directly after the settlement of the case.

"Q. And approximately when in time was that?

"A. I think it was the end of '93."

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Bird felt that he had no obligation to tell WPC of the filing of Serial No. 08/435,798 (106:3-7). Bird testified that he was coerced by DeMoore into filing the patent application (139:1-16).

Bird confirmed that he [and others at PRI] were told by Jesse Williamson and Bill Davis in January, 1995 at the offices of WPC, that WPC would file a process patent application on the flexographic-lithographic process. (108:10-13).

Bird confirms from Bird's deposition, Exhibit 31 (PRI 00622-3), that the first PRI "EZ Interstation" (EZI) was to be installed the weekend of September 16, 1995 or September 23, 1995 (126:5-7). The first EZI installed at WPC had a lot of mechanical problems, with an adverse result of slow speed (132:2-133:6). Bird himself rejected a calendar made at WPC with the first installed "long arm" EZI because of poor quality (135:5-7).

Bird testified that a proposed agreement on exclusivity between PRI and WPC was never reached (196:18-21).

Finally, Bird testified as to the existence of another patent application - now abandoned - filed in the name of he and DeMoore, that DeMoore himself had no part in the conception:

"Q. Let me ask you to explain what is the meaning of that title to you?

"A. It's - it was an idea that I'd come up with while I was at a conference, which employed the use of water-based inks, flexo type inks, if you like, the water-based inks that we would apply to a waterless printing plate might be another conference and all the talk had been about waterless printing where you take a hydrophobic and a hydrophilic surface and you apply oil-based ink, and then the hydrophilic areas on that plate, the ink collects and it's rejected from the - from the oleophilic. It goes into the oleophilic areas and comes - and is rejected by the oleophobic areas, that printing ink.

"It occurred to me that evening after attending the conference that since the base material was aluminum, and would therefore be hydrophilic, and that the surface coating on that material, plate material, was silicone, that that would be hydrophobic. And so my idea, my concept was that you could actually run water-based inks on a waterless printing plate, therefore, and these discussions were around that process and that product.

"Q. Okay.

"A. With a view to filing a patent.

"Q. Was a patent application actually filed?

"A. Yes.

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"Q. And who were the named inventors on that application?

"A. John Bird and Howard DeMoore.

"Q. Was Mr. DeMoore involved at all in the concept leading to that invention that you have described?

"A. No.

"Q. Who made the decision for Mr. DeMoore to be listed as one of the co-investors?

"A. Mr. DeMoore owns the corporation and Mr. DeMoore has the - is listed as the inventor.

"Q. It was his decision to make; is that what you're saying?

"A. It certainly wasn't my decision.

"Q. And so an application was filed listing you and Mr. DeMoore; is that right?

"A. Correct.

"Q. And what's your belief about whether or not Mr. DeMoore should have been a co-investor on that patent?

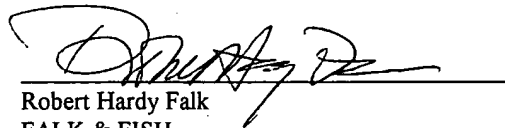
"A. *Shouldn't have been.*

Bird Deposition, 178:3 - 179:22.

Bird admitted that as of the fall of 1994 - early 1995, PRI was a novice in the coater business. AS of 1994, PRI had not sold many "EZ" coaters, and "they weren't very successful". (Bird Deposition: 190:21-22). In fact, as of the meeting of February 11, 1995 where Williamson Printing Corporation agreed to purchase some interstation flexographic coaters for the Davis-Williamson '363 process, PRI had never constructed and sold an auxiliary retractable coater with an anilox roller and chambered doctor. (191:3-7).

The record, at times, was quite contentious, with much tension existing between Bird and DeMoore (e.g., p. 20, line 20 - p. 22, line 12).

Respectfully submitted,



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